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11 TB File No. 24-70340

12 Attorneys for *Secured Creditor* The Bank of New York Mellon fka The Bank of New
13 York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust
14 2005-46CB, Mortgage Pass-Through Certificates, Series 2005-46CB

15 **UNITED STATES BANKRUPTCY COURT**

16 **DISTRICT OF NEVADA**

17 IN RE:

18 BK Case No. 25-11198-abl

19 ALFRED THOMAS DEVAULT,

20 Chapter 13

21 Debtor.

22 **OBJECTION TO CONFIRMATION
23 OF PROPOSED CHAPTER 13 PLAN**

24 The Bank of New York Mellon fka The Bank of New York, as Trustee for the
25 Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-46CB, Mortgage Pass-
26 Through Certificates, Series 2005-46CB (“Creditor”), a secured creditor in the above-
captioned bankruptcy action, hereby submits the following Objection to confirmation of the
Chapter 13 Plan proposed by the Debtor, Alfred Thomas Devault (“Debtor”). This Objection
is based on the authorities cited herein and on such additional submissions and argument as
may be presented at or before the confirmation hearing.

27 **I. STATEMENT OF FACTS**

28 Creditor’s claim is evidenced by a promissory note executed by Debtor and dated
29 August 13, 2005, in the original principal sum of \$351,000.00 (the “Note”). *See* Claim

1 Number 3 on the Claims Register.¹ The Note is secured by a Deed of Trust encumbering the
 2 real property commonly known as 4571 Dopo Ct, Las Vegas, NV 89135-2542 (the
 3 “Property”). *Id.* Creditor holds possession of the Note, which is indorsed in blank. *Id.* The
 4 beneficial interest in the Deed of Trust was also subsequently transferred to Creditor. *Id.*

5 On or about January 16, 2024, Debtor executed a Loan Modification Agreement (the
 6 “Modification”), in which Debtor acknowledged the unpaid balance on the mortgage loan
 7 had increased to \$367,759.86. *Id.* Pursuant to the Modification, the interest rate was reduced
 8 and repayment of \$20,000.00 of the outstanding balance was deferred until the maturity of
 9 the loan with no interest accruing on that portion of the balance while it remains unpaid. *Id.*
 10 Together, the Note, Deed of Trust, and Modification are collectively referred to hereafter as
 11 the “Loan.”

12 On May 12, 2025, Creditor filed its Proof of Claim, secured by the Property,
 13 evidencing a total outstanding balance in the amount of \$405,715.20, including a pre-
 14 petition arrearage claim of \$87,109.19. *See* Claim Number 3 on the Claims Register. As
 15 of the Petition date, the Loan was contractually due for the July 1, 2021 payment and the
 16 monthly payment was \$1,485.45 and subject to change pursuant to the terms of the Loan.
 17 *Id.*

18 On May 1, 2023, Debtor filed a prior voluntary petition for relief under Chapter 13
 19 of the Bankruptcy Code, and was assigned case number 23-11750 (the “First
 20 Bankruptcy”). The First Bankruptcy was dismissed on September 29, 2023 for failure to
 21 make payments. *See* First Bankruptcy Docket Number 26. Subsequently, on
 22 November 13, 2023, Debtor filed another voluntary petition for relief under Chapter 7 of
 23

24
 25 ¹ Pursuant to Rules 201(b) and 201(c) of the Federal Rules of Evidence, which are made
 26 applicable to this proceeding by Rule 9017 of Federal Rules of Bankruptcy Procedure,
 Creditor requests that the Court take judicial notice of the pleadings and papers on file and
 of record in the bankruptcy case(s) discussed herein.

1 the Bankruptcy Code, and was assigned case number 23-15008 (the “Second
 2 Bankruptcy”). On February 12, 2024, the Court entered a discharge in the Second
 3 Bankruptcy. *See* Second Bankruptcy Docket Number 17. On September 5, 2024, a Final
 4 Decree was entered in the Second Bankruptcy and the case was closed. *See* Second
 5 Bankruptcy Docket Number 19.

6 On March 4, 2025, the Debtor filed the Voluntary Chapter 13 Petition that initiated
 7 the above-captioned action (the “Instant Bankruptcy”). *See* Instant Bankruptcy Docket
 8 Number 1.

9 On March 5, 2025, Debtor filed Chapter 13 Plan #1 (the “Plan”). *See* Instant
 10 Bankruptcy Docket Number 7. The Plan proposes Debtor will make regular monthly
 11 payments to the Trustee of \$3,234.00 over the sixty-month term, for a total of \$194,040.00
 12 in proposed Plan payments. *Id.* With respect to Creditor’s claim, the Plan proposes
 13 conduit mortgage payments in an understated amount of \$1,451.96, and provides for the
 14 cure of only \$79,172.00 of the pre-petition arrears owed to Creditor. *Id.*

15 Creditor now objects to the Plan filed herein by the Debtor.

16 II. ARGUMENT

17 The provisions of 11 U.S.C. § 1325 set forth the requirements for a court to
 18 confirm a Chapter 13 Plan. The burden is on the debtor to demonstrate that the plan meets
 19 the conditions essential for confirmation. Warren v. Fidelity & Casualty Co. of N.Y. (In
 20 re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988). For the reasons detailed herein, Debtor
 21 fails to meet this burden.

22 A. THE PLAN FAILS TO PROMPTLY CURE CREDITOR’S PRE-PETITION 23 ARREARS AS REQUIRED UNDER 11 U.S.C. §1322(b)(5).

24 Section 1322(b)(5) of the Bankruptcy Code provides for the curing of any default
 25 on a secured or unsecured claim on which the final payment is due after the proposed final
 26 payment under the plan. Creditor’s secured claim includes \$87,109.19 in pre-petition

1 arrears; however, the Plan proposes Debtor will cure only \$79,172.00 of that amount. The
 2 Property is the Debtor's primary residence and so Creditor's claim cannot be modified
 3 over Creditor's objection pursuant to 11 U.S.C. §1322(b)(2). In order to properly cure the
 4 pre-petition arrears owed to Creditor over the 60-month term of the Plan, Debtor will need
 5 to make an average payment on the mortgage arrears of \$1,451.82 per month. Because
 6 the Plan proposed by the Debtor fails to cure Creditor's pre-petition arrears, it cannot be
 7 confirmed.

8 **B. THE PLAN FAILS TO PROVIDE PROPERLY FOR ONGOING POST-**
PETITION PAYMENTS.

9 Section 1322(b)(5) of the Bankruptcy Code also requires the maintenance of post-
 10 petition payments on a secured or unsecured claim on which the final payment is due after
 11 the proposed final payment under the plan. 11 U.S.C. § 1322(b)(5). Here, the Loan
 12 matures September 1, 2035, which is after the term of the Plan. Yet, the Plan fails to
 13 properly provide for ongoing post-petition payments to Creditor. As stated above, the
 14 current monthly payment on the Loan is \$1,485.45. However, Debtor proposes a conduit
 15 payment of only \$1,451.96 per month. *Id.* Because the Plan fails to provide properly for
 16 the maintenance of post-petition payments on Creditor's secured claim, it cannot be
 17 confirmed as proposed.

18 **C. THE CHAPTER 13 PLAN IS INFEASIBLE.**

19 Pursuant to 11 U.S.C. § 1325(a)(6), a court shall not confirm a plan unless the
 20 debtor will be able to make all payments under the plan. Debtor's Schedule J states that
 21 Debtor has gross income of \$3,587.51 and expenses of \$3,563.18. *See* Instant Bankruptcy
 22 Docket Number 17. Therefore, as Debtor admits, Debtor's net income each month is only
 23 \$24.33. *Id.* In addition, Debtor does not expect an increase or decrease in income or
 24 expenses. *Id.*

25 /./.
 26

1 However, the minimum monthly payment required to make the correct ongoing
2 mortgage payment and cure the pre-petition arrears on the Loan is \$2,937.27, which is
3 equal to 82% of Debtor's gross income. Moreover, the Plan proposes Debtor will pay the
4 Trustee \$3,234.00 each month, which is equal to more than 90% of Debtor's gross income.
5 As a result, Debtor cannot demonstrate any ability to fund the Plan and properly provide
6 for Creditor's secured claim as well as other amounts that need to be paid through the
7 Plan.

8 In addition, the Court dismissed the First Bankruptcy because Debtor failed to
9 make plan payments. Debtor's poor performance in the First Bankruptcy is further
10 evidence of the lack of feasibility of the Plan in the Instant Bankruptcy and demonstrates
11 that this action is not likely to succeed. Finally, the lack of feasibility of the Plan is
12 evidenced by Debtor's refusal to commence any payments to the Trustee. *See* Trustee's
13 Ledger, a true and correct copy of which is attached hereto as **Exhibit "1"** and
14 incorporated herein by reference. As of the filing of this objection, Debtor has refused to
15 make any payments to the Trustee and is already delinquent in the amount of \$6,468.00.
16 *Id.*

17 Any Chapter 13 Plan proposed by Debtor must provide for and eliminate the
18 Objections specified above in order to be feasible and to provide adequate protection to this
19 Creditor. Because the Plan fails to do so, Creditor respectfully requests that the Court deny
20 confirmation of the Chapter 13 Plan as proposed by Debtor.

21 WHEREFORE, Creditor prays as follows:

22 1. That confirmation of the proposed Chapter 13 Plan be denied;
23 2. For attorney's fees and costs incurred herein;

24 /././

25 /././

26 /././

1 3. For such other and further relief as this Court deems just and proper.

2 DATED this 20th day of May, 2025.

3 **TIFFANY & BOSCO, P.A.**

4 By /s/ Regina A. Habermas, Esq.

5 **REGINA A. HABERMAS, ESQ.**

6 Attorney for Secured Creditor

7 10100 W. Charleston Boulevard, Suite 220

8 Las Vegas, NV 89135

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EXHIBIT “1”

EXHIBIT “1”

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25-11198-ABL	ALFRED THOMAS DEVAULT (xxx-xx-1922)	4571 DOPO CT • LAS VEGAS • NV • 89135	\$3,234.00	Bar Date(s):	5/13/2025 9/1/2025
				Confirmed:	Not Confirmed
	Trustee: Kathleen A. Leavitt	Attorney: LAW OFFICE OF ERIK SEVERINO		Case Status:	ACTIVE

Debtor Pay Schedules

Start Date	Number Periods	Amount	How Often	Who's Paying	Order Date	Action
4/4/2025	end of plan	\$3,234.00	MONTHLY	ALFRED THOMAS DEVAULT	3/6/2025	

Forgive Information

Date	Amount	Description

Payments Expected for Step 1:

Period	Start Date	End Date	Payment Amount Expected	Total
1	4/4/2025	5/3/2025	\$3,234.00	\$3,234.00
2	5/4/2025	6/3/2025	\$3,234.00	\$6,468.00
3	6/4/2025	7/3/2025	\$3,234.00	\$9,702.00
4	7/4/2025	8/3/2025	\$3,234.00	\$12,936.00
5	8/4/2025	9/3/2025	\$3,234.00	\$16,170.00
6	9/4/2025	10/3/2025	\$3,234.00	\$19,404.00
7	10/4/2025	11/3/2025	\$3,234.00	\$22,638.00
8	11/4/2025	12/3/2025	\$3,234.00	\$25,872.00
9	12/4/2025	1/3/2026	\$3,234.00	\$29,106.00
10	1/4/2026	2/3/2026	\$3,234.00	\$32,340.00
11	2/4/2026	3/3/2026	\$3,234.00	\$35,574.00
12	3/4/2026	4/3/2026	\$3,234.00	\$38,808.00
13	4/4/2026	5/3/2026	\$3,234.00	\$42,042.00
14	5/4/2026	6/3/2026	\$3,234.00	\$45,276.00
15	6/4/2026	7/3/2026	\$3,234.00	\$48,510.00
16	7/4/2026	8/3/2026	\$3,234.00	\$51,744.00
17	8/4/2026	9/3/2026	\$3,234.00	\$54,978.00
18	9/4/2026	10/3/2026	\$3,234.00	\$58,212.00
19	10/4/2026	11/3/2026	\$3,234.00	\$61,446.00
20	11/4/2026	12/3/2026	\$3,234.00	\$64,680.00
21	12/4/2026	1/3/2027	\$3,234.00	\$67,914.00
22	1/4/2027	2/3/2027	\$3,234.00	\$71,148.00
23	2/4/2027	3/3/2027	\$3,234.00	\$74,382.00
24	3/4/2027	4/3/2027	\$3,234.00	\$77,616.00
25	4/4/2027	5/3/2027	\$3,234.00	\$80,850.00
Total				\$80,850.00

Breakdown for Combined Schedules

Period	Date (Month/Year)	Payment Due	Payment Received	Forgive Amount	Amount Due
1	4/2025	\$3,234.00			\$3,234.00
2	5/2025	\$3,234.00			\$6,468.00

Total Delinquent Amount: \$6,468.00

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15 **UNITED STATES BANKRUPTCY COURT**

16 **DISTRICT OF NEVADA**

17 IN RE: BK Case No.: 25-11198-abl

18 ALFRED THOMAS DEVAULT, Chapter 13

19 Debtor,

20 **CERTIFICATE OF SERVICE**

21 **CERTIFICATE OF SERVICE**

22 1. On this 20th day of May, 2025, I served the following documents:

23 **OBJECTION TO CONFIRMATION OF PROPOSED CHAPTER 13 PLAN**

24 2. I caused to be served the above-named document by the following means to the
25 persons as listed below:

26 **X a. ECF System**

27 Erik C Severino
28 erik@mylasvegaslawyers.com
29 Attorney for Debtor

30 Kathleen A. Leavitt
31 courtsecf3@las13.com
32 Trustee

1 **X b. United States mail, postage fully prepaid:**

2 Erik C Severino
3 7251 W. Lake Mead Blvd., Ste 300
4 Las Vegas, NV 89128
5 Attorney for Debtor

6 Alfred Thomas Devault
7 4571 Dopo Ct.
8 Las Vegas, NV 89135
9 Debtor

10 **I declare under penalty of perjury the foregoing is true and correct.**

11 DATED this 20th day of May, 2025.

12 By: /s/ Michelle Benson

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